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DATE: November 6, 2003

TO: EXAMINER ZANDRA SMITH

FACSIMILE NO.: 703/308-7722

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RE: SN 09/441,683

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Applicant(s): Slater

Docket No.

KOS-11702/03

Serial No.

09/441,683

Filing Date

Nov. 16, 1999

Examiner

Z. Smith

Group Art Unit

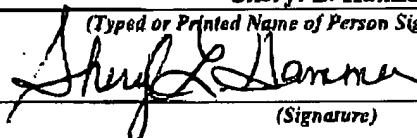
2877

Invention: **OPTICAL PROBE WITH SAMPLING WINDOW CLEANING CONFIGURATION**

I hereby certify that this

Response to Office Action*(Identify type of correspondence)*is being facsimile transmitted to the United States Patent and Trademark Office (Fax. No. 703/308-7722)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

11.7.03

In re application of: Slater

Serial No.: 09/441,683

Group No.: 2877

Filed: Nov. 16, 1999

Examiner: Zandra Smith

For: OPTICAL PROBE WITH SAMPLING WINDOW CLEANING CONFIGURATION

RESPONSE TO OFFICE ACTION

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Action mailed August 6, 2003, the claims of this application are being resubmitted in unamended form for reconsideration in view of the following remarks. The allowability of claims 1, 2, 4-7 and 9 is duly noted. Claims 8, 11 and 13 stand rejected under 35 U.S.C. §103(a) over Lemelson ('646). The Examiner contends that item 92 of Figure 11 of Lemelson "may carry Raman wavelengths through a window for analysis," referencing the background of the Lemelson invention at column 1, lines 15-20. Conceding that the embodiment of Figure 11 uses only visible light or laser energy, the Examiner argues that it would have been obvious to use Raman wavelengths "because certain body constituents produce distinguishable Raman spectra when illuminated with the proper wavelength." Applicant disagrees that the Examiner has established *prima facie* obviousness.

First, the Examiner's reasoning that it would have been obvious to use Raman wavelengths in the device of Lemelson is self-evident and unsupported. That is, the Examiner's reasoning is simply a definition of Raman scattering. Simply "because certain body constituents produce distinguishable Raman spectra when illuminated with the proper wavelength," does not provide sufficient foundation that the '646 patent renders obvious Applicant's claims.

Secondly, it is clear from the Lemelson disclosure, that the fiber optic cables 92 are not only adapted to carry visible light or laser energy but the purposes therefore are spelled out at column 14, lines 17+, as follows: "For the purposes of illumination and/or ablation of select tissue such as cancerous tissue and tumors." There is no mention whatsoever in the Detailed Description of Lemelson,